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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/253,110 02/19/99 JORGENSEN M 98.03

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EXAMINER

CHOI, S

ART.UNIT

PAPER NUMBER

3724

DATE MAILED:

09/12/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/253,110

Applicant(s)
Jorgensen

Examiner
Stephen Choi

Group Art Unit
3724



☒ Responsive to communication(s) filed on Jun 22, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-23 is/are pending in the application.

Of the above, claim(s) 5 and 10-23 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-4 and 6-9 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Jun 22, 2000 is ☒ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Response to Amendment

1. Applicant's response has overcome the objections to the drawings and the rejections under 35 USC 112, 2nd paragraph of the last office action.
2. Amendment to the claims filed 6/22/2000 does not amend the claims amended by the amendment filed on 1/11/2000. For example, claim 1, lines 6-7, "and a splitter ... worktable," was already cancelled and claim 2, lines 1-6, "wherein ... splitter" was already added on the amendment filed on 1/11/2000. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 6, 7(2-4, 6), 8(7(2-4, 6)) and 9(8(7(2-4, 6))) are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogl et al. in view of Waugh and Auel.

Vogl et al. discloses the invention substantially as claimed including:

- a) a pair of spaced-apart, vertical side panels (31, 34) made of transparent material (col. 3) having a front portion, central and rear portions with a lower edge having a forward terminus (Fig. 4-5);

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- b) a pair of vertical side skirts (32, 35) made of transparent material (col. 3) and being movable between a lowered position and a raised position;
- c) a forwardly and upwardly inclined slots (40) at about thirty degrees and means for suspending a side skirts (41, 42);
- d) means for moving the hood between a retracted position and a working position including a single pivot attachment including a slot pin and retainer means (Fig. 2-3) and stop means (37, 38, col. 4, lines 29-33).

Vogl et al. does not disclose a nose panel having a leading and trailing edges, a convexly curved upper cowl having an inclined front portion terminating a tapered forward edge having a inclined portion terminating at a rear edge, a convexly curved lower cowl having a front portion terminating in a forward edge, a central and rear portion, an intake port, an orifice, a splitter, a rear discharge wall having an air discharge hole and vacuum conduit attachment means, stop means attached to an upper rear edge. Waugh discloses a device (20) having a housing (22) with a lower surface (24) curved convexly to accommodate the spinning saw blade. The housing (22) being longer than the top surface (17) of the fixed blade guard (11) such that the housing (22) extends beyond the front (12) and rear terminus (13) of the fixed blade guard (11). The housing (22) has an outer surface (26) having a downwardly extending flange (28) which extends beyond and radially inward from the lower surface (24) and having an inner surface (30) which defines a fixed blade guard receiving channel (32) with lower surface (24). A front vacuum aperture (52) is formed through the lower surface (24) near the front end (36) and a rear vacuum aperture (54) is formed through the lower surface (24) near the rear end (40). The lower surface (24), outer

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surface (26), inner surface (48), and top surface (56) define a vacuum chamber (58) which extends from the rear end (40) to the front end (36). A vacuum source connector (60) is attached to the rear end (40). Auel discloses a forwardly inclined nose (6) and a splitter plate (1) secured to a saw blade and an outer guard having a plurality of openings (11) pivoted to the splitter (1) by a bolt (9). Auel also discloses a pair of upper guards (20) secured to the outer arms (10) and to hold the outer arms (10) in alignment with the guard arm (4) to limit the movement of the wing plate (12). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a dust collecting device as taught by Waugh and Auel on Vogl's device in order to provide a device served to protect the user and to facilitate removal of sawdust by a directed air stream generated by a saw blade.

Response to Arguments

5. Applicant's arguments filed 6/22/2000 have been fully considered but they are not persuasive.

In response to applicant's argument regarding "A. VOGL ET AL. NOT "SUBSTANTIALLY SIMILAR", "B. WAUGH'S DUST COLLECTING DEVICE PROVIDES A DIFFERENT, AND INFERIOR AIR CIRCULATION PATH" and "C. ADDING AUDEL TO THE COMBINATION DOES NOT SOLVE THE PROBLEMS AND WOULD NOT SATISFY AN IMPORTANT OBJECT OF APPLICANT'S INVENTION", it appears applicant is attempting to make an argument based on the functional recitation of Claims, and not the structural limitations. In order to be given patentable weight, a functional recitation must be

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expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. In *re Fuller*, 1929 C.D. 172; 388 O.G. 279. Applicant should note that the functional limitations following "whereby" language are not in compliance with the Supplemental Guidelines published in the Official Gazette on July 25, 2000. Such limitations cannot be used to invoke 35 USC 112, 6th paragraph, and have therefore been given their broadest reasonable interpretation, without considering equivalence. In addition, applicant's arguments against the references individually cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Furthermore, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that there is nothing in Waugh, Vogl et al., and/or Auel references, nor anything in the prior art generally to suggest to a person of ordinary skill the modification proposed by the examiner, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In *re*

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Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969. In this case, Vogl reference concerns with preventing the outward flying of wood chips and saw dust, Waugh device concerns with airborne dust and Auel concerns with improving saw guards that can be mounted on the splitter. Thus, it is the examiner's position that one of ordinary skill in the art would have been motivated to combine the teachings of those references to improve the device for dust collecting.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Choi whose telephone number is (703) 306-4523. The examiner can normally be reached on Monday to Friday from 9:00 to 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada, can be reached on (703) 308-2187. The fax phone number for this Group is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.



KENNETH E. PETERSON
PRIMARY EXAMINER

sc
September 8, 2000